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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 456

CHARLES E. LEYDECKER,

Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CLAIMS.

FRED W. SHIELDS,
Counsel for Petitioner.



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**PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CLAIMS.**

The petitioner, Charles E. Leydecker, prays that a writ of certiorari issue to review the judgment of the Court of Claims in the above case.

Opinion Below.

The opinion of the Court of Claims is officially reported in 97 C. Cls. 711.

Jurisdiction.

The judgment of the Court of Claims was entered April 5, 1943; petitioner's motion to vacate judgment was overruled on April 28, 1943; and petitioner's second motion to vacate, and to take additional evidence was overruled July 29, 1943. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

Question Presented.

Whether the Court below abused its discretion in overruling petitioner's motion to vacate the judgment entered in his favor when competent and uncontradicted evidence in the case showed conclusively that he was entitled to a judgment for a larger sum.

Statement.

The petitioner, an officer in the United States Army filed suit in the Court below, claiming additional rental and subsistence allowances on account of a dependent mother, as provided by the Act of June 10, 1922, c. 212, 42 Stat. 625, as amended by the Act of May 31, 1924, c. 224, 43 Stat. 250. The Court below, on December 7, 1942, announced its decision holding that the petitioner was entitled to recover the allowances claimed, but suspended the entry of judgment pending the filing by the General Accounting Office of a computation showing the amount due the petitioner under the Court's decision. On March 3, 1943, the General Accounting Office sent a computation to Chief Clerk of the Court below, showing that the petitioner was entitled to recover the sum of \$1,119.53. On April 5, 1943, the Court below entered judgment for the petitioner in the sum of \$1,119.53.

Petitioner next filed a motion to vacate the judgment, which motion was overruled by the Court on April 28, 1943. On June 28, 1943, the General Accounting Office filed a supplemental computation, correcting its original computation, and showing that the petitioner was entitled to recover \$1,252.53. It also *intimated* that the findings of fact of the Court below were erroneous, and that if corrected to accord with the actual facts the petitioner would be entitled to even more than the \$1,252.53. The corrected computation is printed in full as Appendix "A".

On July 21, 1943, petitioner filed a second motion to vacate the judgment and for leave to submit additional evidence, which motion was overruled on July 29, 1943.

Petitioner has not received payment of his judgment.

Specification of Error to Be Urged.

The Court of Claims erred:

1. In overruling petitioner's motion to vacate the judgment in his favor when the evidence in the case showed conclusively that the judgment had been erroneously computed, and that he was entitled to recover a larger sum.

Reasons for Granting Writ.

This case is important because it presents a situation where the judgment of a Court is plainly in error, but the Court refuses to correct it. It will be conceded that a Court has wide discretion in the granting or overruling of motions presented to it, and that ordinarily its action on such motions will not be reviewed on appeal, in the absence of a showing that it has abused the discretion vested in it. *cf. Rio Grande Irrigation Company v. Gildersleeve*, 174 U. S. 603, 609. Where, as here, the evidence in the case clearly shows that the judgment of the Court below has been erroneously computed, and the Court nevertheless refuses to vacate its erroneous judgment, it would seem that it has abused the discretion vested in it, and its action can properly be reviewed by this Court.

It will not be contended that this situation will arise frequently. However, it is significant that it has arisen before. *cf. Ruf v. United States*, 87 C. Cls. 248. In any event, it would seem that a matter of sufficient public importance to justify review by this Court is presented when a Court refuses to entertain a motion to vacate its judgment, although the evidence in the case shows conclusively that the judgment is erroneous.

Conclusion.

It is respectfully submitted that, for the reasons stated, this petition for a writ of certiorari should be granted.

FRED W. SHIELDS,
Attorney for Petitioner.

October, 1943.

